EDITOR'S NOTE

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No. 87-1162

Supreme Court, U.S.
FILED
JAN 11 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

ALICE CLISSURAS,

Plaintiff-Appellant,

v.

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/ CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Appellees.

APPEAL FROM THE
COURT OF APPEALS OF THE
STATE OF NEW YORK

APPELLANT'S JURISDICTIONAL STATEMENT

ALICE CLISSURAS, pro se
Plaintiff-Appellant
P. O. Box 021750
Brooklyn, NY 11202-0038
(718) 875-6171

57 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether plaintiff was properly deprived of her Constitutional right to counsel, as follows:

a. By the unilateral withdrawal of Defendant Union Attorney's representation of plaintiff;

b. By the subsequent refusal of over thirty consulted attorneys to represent plaintiff;

c. By the extraordinary steps taken and the tactics used by defendants to take advantage of plaintiff's limited knowledge of the laws and proceedings, by which actions the defendants, in effect, determine who is to be allowed her Constitutional rights; and

d. By the failure of the Courts below to protect the rights of a pro se plaintiff, who in this case is forced to represent herself?

2. Whether Dismissal of Complaint is Constitutionally, lawfully, and properly granted for defendants on the questions of discrimination, fraud, conspiracy, Constitutional deprivations, and breach of contractual and fiduciary duties, where plaintiff presents documentary evidence of the following facts:

a. Employment discrimination based on plaintiff's sex and religion, which was effected by defendants' discriminatory and fraudulent diminution of plaintiff's employment entitlements and benefits;

b. Defendants' false statements and misstatements concerning

the facts of plaintiff's employment and the laws pertaining thereto;

c. Conspiracy on the part of all defendants to fraudulently conceal the causes of action;

d. Defendants' failure to respond to plaintiff's claims;

e. Defendants' failure to present any evidence controverting plaintiff's documented claims;

f. Defendants' failure to present a proper defense;

g. Defendants' steadfast and continuing refusal to produce plaintiff's employment records, which refusal evidences the continuing conspiracy to conceal the discrimination, fraud, Constitutional deprivations, and breach of duties;

h. Defendants' grossly negligent acts in the maintenance of plaintiff's employment moneys

and their failure to take any remedial actions; and

i. Defendants' failure to act in the scrupulous good faith and trust requirements of their fiduciary capacities?

3. Whether plaintiff was properly deprived of her Constitutional right to a trial by jury, as follows:

a. By the actions of the Equal Employment Opportunity Commission and the New York State Division of Human Rights, both of which agencies did not even minimally investigate and did not allow a hearing of the claims herein; and

b. By the discretionary actions of the Courts below which dismissed the many issues of fact herein, including documented discrimination and fraud, without

a trial, without addressing the claims, and without requiring the defendants to respond to the claims?

4. Whether plaintiff was properly deprived of her Constitutional right of due process of law, as follows:

a. By the failure of the Appellate Courts below to issue signed orders;

b. By the failure of the Courts below to respond according to law to the defendants' fraud, which was brought to the attention of each Court by plaintiff's documented proof and evidence;

c. By the failure of the Courts below to address the claim of discrimination, which claim is not even mentioned in the orders of the Courts;

d. By the failure of each Court below to render an opinion and to give reasons for dismissal of complaint, thereby depriving plaintiff of the right of countering the Courts' positions and further depriving plaintiff of the right of perfecting an appeal; and

e. By the failure of the Courts below to make a record of court proceedings or the refusal to make a record available to plaintiff, refusal of plaintiff's request for access to docket and files, failure to allow reporting of decision, and failure to assist plaintiff pro se with procedural information?

5. Whether the Courts below committed manifest and reversible errors, as follows:

a. By the failure of the Courts to order an immediate trial of the many issues of fact raised by the complaint and the motions for dismissal, as required by law;

b. By the failure of the Courts to sufficiently consider the claims of discrimination, fraud, concealment, conspiracy, and breach, discretely, and then to render a determination as to each claim according to the Constitution, the laws, and the proof submitted;

c. By the failure of the Courts to address the sham and improper defense of defendants, that of the expiration of a four-month statute of limitations applicable to all of plaintiff's claims, and the failure to show that there is no four-month

statute of limitations applicable to discrimination, fraud, concealment, conspiracy, and breach;

d. By the failure to consider that a date and cause for accrual have not been stated;

e. By the failure to consider that defendants concealed the causes of action and continue to do so, that plaintiff documented the points in time when she discovered the causes of action and defendants' concealment, and that defendants have not shown by any proof that plaintiff was informed of the causes of action at the time of defendants' inferred date of accrual;

f. By the failure to consider that the discrimination did not consist of one isolated and distinct act;

g. By the failure to consider that not one of plaintiff's claims has staled as to any date, inferred, actual, concealed, or discovered; and

h. By the failure to consider that a dispute concerning the facts of the applicability of a statute of limitations requires an immediate trial according to law and is not subject to dismissal on motion?

ALL PARTIES AND THEIR ATTORNEYS

CLISSURAS v. CITY OF NEW YORK, et al.,

N.Y.S. Ct. of Ap., Mo. No.1166SSD74
N.Y.S.S.Ct. App. Div. 2d, No. 87603
N.Y.S.S.Ct. Kings Co., Index No. 20522/85

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

ALICE CLISSURAS,

Plaintiff-Appellant,

v.

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Appellees.

PLAINTIFF-APPELLANT'S JURISDICTIONAL STATEMENT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Pursuant to Rules 10, 12, 13, and 15 of the Rules of the Supreme Court of the United States, appellant, Alice Clissuras, files this statement of the basis upon which it is contended that the Supreme

Court of the United States has jurisdiction to review the orders of the Supreme Court of the State of New York, Kings County, dismissing the complaint, and the unsigned orders of the New York State Supreme Court, Appellate Division, Second Department, and the New York State Court of Appeals, affirming dismissal of the complaint herein.

OPINIONS BELOW

No opinion was delivered by the Courts and the Administrative Agencies below, and no reporting of decisions has occurred.

JURISDICTION

The decision of the Court of Appeals of the State of New York, dismissing plaintiff's appeal sua sponte, was issued and entered October 13, 1987. It consists of a short statement on a small piece of paper; it bears no signature;

and it is reproduced here in Appendix A, infra, p. 1a (hereinafter App. A, 1a). Subsequently, the decision was sent to plaintiff on what appeared to be Court stationery; and this copy, also, does not bear judicial signature (App. A, 2a).

The decision of the Appellate Division, Second Department, of the Supreme Court of the State of New York was issued and entered June 22, 1987. It was enclosed in a New York City Law Department back and was mailed by that Agency. It bears no signature (App. A, 3a-7a). Subsequently, a duplicate of this decision was mailed to plaintiff by the Court, which duplicate, also, does not bear signature.

The orders of the Supreme Court of the State of New York, Kings County, Special Term, dismissing the complaint, were entered on the 19th day of December, 1985 (Shaw, J.), as against the City

Defendants and the Department of Insurance Defendant; on the 2d day of January, 1986 (Bernstein, J.), as against Defendant Lewis Rosenberg; and on the 19th day of February (Hurowitz, J.), as against the State Defendants and Defendant Professional Staff Congress/CUNY. (App. A, 8a-12a; 13a-15a; and 16a-18a, respectively)

The Equal Employment Opportunity Commission did not investigate, did not hold a hearing, and did not issue a decision. The claims were filed with the EEOC June 20, 1985.

The New York State Division of Human Rights did not investigate, did not hold a hearing, and did not issue a decision. The claims were deferred to the SDHR on June 24, 1985.

GROUNDS FOR JURISDICTION OF SUPREME COURT

This appeal arises from an action for employment discrimination, civil rights violations, fraud, conspiracy, breach of contract, breach of fiduciary duty, and deprivation of Constitutional rights to due process, counsel, trial, and equal protection of laws. The order of the Court of Appeals of the State of New York, dismissing appeal, was entered October 13, 1987. A timely Notice of Appeal was filed on November 2, 1987, in the Court of Appeals of the State of New York, the Supreme Court of the State of New York, and this Court (App. A, 19a-20a). The jurisdiction of this Court is invoked under the provisions of Amendments I, V, VII, IX, and XIV of the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action involves the following Constitutional and Statutory provisions:

1. AMENDMENT XIV to the United States Constitution, SECTION 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

2. AMENDMENT VII to the United States Constitution:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." (Emphasis added.)

3. AMENDMENT V to the United States Constitution, in relevant part:

> "* * * nor shall any person * * * be deprived of life, liberty, or property, without due process of law; * * *."

4. AMENDMENT I to the United States Constitution, in relevant part:

> "Congress shall make no law * * * abridging the freedom of speech, * * * or the right of people * * * to petition the Government for a redress of grievances."

5. The right to appeal under the Federal and New York State Civil Rights Laws governing discriminatory employment practices.

6. The right to appeal under the Federal and State Constitutions and Laws for violations of the laws governing conspiracy, fraud, and breach of contract and fiduciary duty. And

7. The right to appeal to this Court for protection of the Laws for

pro se party, who is compelled to represent herself due to the refusal of over 30 attorneys to be retained and who is, therefore, disadvantaged in knowledge of the law and her rights under the law.

8. The right to appeal to this Court to address and correct injustices under AMENDMENT IX to the United States Constitution:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

STATEMENT OF THE CASE

Plaintiff, a City University of New York professor, brought this action to address the injustices of the unequal application of the laws and to recover for employment discrimination which resulted in the fraudulent diminution of her employment entitlements and benefits.

The nine defendants herein include plaintiff's college employer, pension system and board, union, attorney retained by union, and governmental overseer of pension systems.

Discrimination was practiced against plaintiff on the bases of her sex and religion. The acts of discrimination are many in number and span over the 34 years of employment at defendant New York City Technical College ("College"), a period of 34 years from September 1, 1948, to September 1, 1982, the effective date of her retirement.

The discrimination is systemic, invidious, and fraudulently concealed. It has not ended; it continues to date.

Due to the defendants' concealment of the causes of action, discovery thereof was severely impeded. Plaintiff discovered the discrimination and fraud long after retirement. Plaintiff discovered that similarly situated male and non-Christian teachers were receiving employment entitlements according to law, of which plaintiff has been fraudulently deprived.

Plaintiff set forth the facts of the claims according to which she is entitled to recover in a 33-page complaint (R. 69-101).* The claims of discrimination,

*Reference is to RECORD ON APPEAL, Vols. I and II, pp. 1-331 and 332-657, respectively, filed on appeal to Supreme Court of the State of New York, Appellate Division, 2d Dept. Volume III, pp. 658-901, was compiled by plaintiff for appeal to Court of Appeals of the State of New York and this Court. It has not been filed in this form, but as individual papers.

fraud, concealment, civil conspiracy, deprivations of Constitutional rights, and breach were fully alleged. On the three motions to dismiss the complaint, the many issues of fact were dismissed without a trial, without consideration of the claims, without consideration of the weight of plaintiff's documentary evidence, and without consideration of defendants' failure to controvert plaintiff's claims by response or by documentation. Only one of the three motions was placed on the record (R. 32-66). The motion record shows clearly that the defendants did not respond to the claims, that concealment of fraud continues, that the Court did not address the fraud, that a decision was made to dismiss the complaint on the day on which the motion papers were submitted, and that the many issues of fact were dismissed without a trial.

For proof of plaintiff's claims, countless documents were attached to the

affidavits in opposition (R. 213-275, 342-418, 464-469, 544-554, and 608-636), attesting to defendant's violations herein.

On the other hand, the defendants did not submit even one paper controverting plaintiff's claims and instead relied on fraudulent statements and, in some instances evidence that had been altered. Due to the volume of wrongs, plaintiff sets forth only limited illustrations of this point. In a letter from the Defendant State Department of Insurance, the statement is made that "* * * the procedures followed by the Retirement System are in conformity with the applicable statutes as contained in the New York City Administrative Code." This is the fraud upon which plaintiff was to rely to her detriment since the Code is not the law applicable to Board of Higher Education faculty (R. 321). In a letter

from the Defendant Pension System, the correct pension plan is identified; namely, the Career Pension Plan. However, the fraud here is that the Plan was applied to only 20 years of plaintiff's 34 years of Career Plan service (R. 348).

The Defendants College and Pension System steadfastly refuse, to date, to give plaintiff a copy of her records. In a letter from Defendant College, which essentially consists of misinformation, one of the points of misinformation was corrected, by hand alteration, for the purpose of supporting the motion to dismiss (R.509). The letter was without alteration when it was first mailed to plaintiff (R. 554).

From the time of plaintiff's retirement forward, plaintiff discovered the many causes herein piecemeal and from different sources. Finally, in July of 1985, plaintiff received a communication

from Defendant City University which, in effect, certified that plaintiff had retired in 1977, instead of 1982 (R.482). Plaintiff then served the summons and complaint in this action (R. 67, 121) on or about August 28th, 1985. The Defendant Union Attorney served his answer on September 13th, 1985, by which issue was joined (R. 102).

By three orders, the Supreme Court, Kings County, dismissed the complaint as against all of the defendants. The three orders did not address the claims. The claim of discrimination has not even been mentioned in the orders and decisions of all of the Courts below.

The Courts below did not state date and cause of accrual, as the defendants also did not state.

The Courts below did not consider each cause and render a decision as to each.

The Courts below did not render opinions, by which plaintiff is deprived of her right to respond.

The Appellate Division issued Decision & Order (one paper) which illustrates the above points and, in addition, clearly shows the dismissal of issues of fact without a trial. The Court states, "Although the plaintiff has characterized her causes of action as involving fraud, conspiracy, breach of contract, breach of fiduciary duty and negligence, the crux of her complaint is that she believes the defendants have improperly calculated her pension benefits." (App. A, infra, 5a). The Court thereby dismissed, on appeal, plaintiff's claims, including fraud, without a trial, as characterizations, completely disregarding the facts of the claims as they were fully set forth in the complaint and as they were fully documented in 657 pages of the RECORD to that Court.

As to Defendants Union and Union Attorney, the Appellate Division continues, in the next two paragraphs, to decide issues of fact which have not been tried and which have been documented by plaintiff and not controverted by defendants (App. A, infra, 6a-7a).

The Court of Appeals of the State of New York did not respond to the many injustices herein by other than a dismissal of the appeal sua sponte.

The decisions of the two Appellate Courts were not signed by the judiciary and remain unsigned.

As to this statement of plaintiff's case, the strictures of conciseness forced plaintiff to set forth brief illustrations of the many injustices committed invidiously herein over the span of 34 years and brief illustrations of the deprivations of rights, which also have been countless.

STATEMENT OF SUBSTANCE

Plaintiff's claims have not been addressed by the defendants and have not been addressed by the Courts. In addition, the claims have not been investigated, heard, or tried by any of the parties or agencies required by the Constitution and by law to do so.

The issues herein are issues of fact as the complaint, the questions presented for review, the lengthy facts of the case, and the 901 pages of the RECORD ON APPEAL so prove.

The defendants attempt by sham, frivolous, and unconstitutional argument of application of a four-month Statute of Limitations to all of plaintiff's claims, including discrimination and fraud, to dismiss the complaint.

As to this, in Pauk v. Board of Trustees of City University of New York, 654 F.2d 856 (2d Cir. 1981), the Court

held the four-month limitation to be unconstitutional in like deprivations to the instant case.

Further, in Melanie v. Board of Higher Education of the City of New York, 561 F.Supp. 769 (1983), the Court found that the defendant discriminated against women and enjoined the Board from continuing such discrimination. The Melanie decision encompasses all of plaintiff's years of employment, the Board is a defendant herein, and it continues to discriminate as the July, 1985 communication shows (R.482).

Further, the letter from Defendant Department of Insurance (R. 321), referred to above on p. 12, is dated March 27, 1985. The copy of this letter which was mailed to plaintiff shows June 7, 1985, as the date (R. 405). Plaintiff received the letter after the June 7 date. It appears that the defendant

altered the date to improperly and falsely support dismissal argument.

Still further, the New York State C.P.L.R. provides in §214(2) for a three-year limitations period for liability created or imposed by statute, which has been consistently applied by the Courts in civil rights employment discrimination actions and which was applied in Pauk, supra.

The defendants use sham arguments and avoid the limitations provisions of the C.P.L.R. for fraud and breach of contract. They avoid the provisions for revival by acknowledgment or payment and they avoid the effects of discovery of fraud on the limitations period.

All of plaintiff's claims are not barred by any limitations period. The avoidance of defendants of the dates and causes of accrual attests to this.

For the reasons stated above and in all the papers submitted heretofore, plaintiff submits that this appeal brings before this Court substantial and important Constitutional questions which require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Plaintiff should be allowed a meaningful hearing of the issues herein. Denial of such hearing, to date, represents a gross injustice and a gross deprivation of Constitutional rights.

All of the Courts below dismissed material issues of fact, which should not have been decided on motions to dismiss and dismissal should not have been upheld by decisions which are not signed by the judiciary.

The total lack of response to the injustices herein is unconscionable

WHEREFORE, plaintiff-appellant prays that her Constitutional and lawful right of appeal to this Court be noted. Moreover, plaintiff-appellant seeks the protection of this Court according to the Constitution and the laws for the many causes of action herein.

Respectfully submitted,

ALICE CLISSURAS, pro se
Plaintiff-Appellant
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APPENDIX A

Mo. No. 1166 SSD 74

Alice Clissuras,

Appellant,

vs.

City of New York, et al.,

Respondents.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

DIVISION COURT OF APPEALS OCT 13 1987

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the thirteenth day of October A. D. 1987

PRESENT, HON. SOL WACHTLER
Chief Judge, presiding.

Mo. No. 1166 SSD 74

Alice Clissuras,

Appellant.

vs.

City of New York, et al.,

Respondents.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

(Seal of the Court)

/S/ Donald M. Sheraw

Donald M. Sheraw
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT
____AD2d____ Argued March 5, 1987

LAWRENCE J. BRACKEN, J.P.
CHARLES B. LAWRENCE
JOSEPH J. KUNZEMAN
ARTHUR D. SPATT, JJ.

3774E
3775E
3776E

Alice Clissuras, appellant, v City of New York, et al., respondents.

DECISION & ORDER

Alice Clissuras, Brooklyn, N.Y., appellant pro se.

Peter L. Zimroth, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Michael S. Adler of counsel), for respondents City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York.

Robert Abrams, Attorney-General, New York, N.Y. (Anne Ehrenkranz of counsel), for respondents Board of Higher Education of the City of New York, City University of New York, New York City Technical College and Department of Insurance of the State of New York.

D. Nicholas Russo, New York, N.Y., for respondent Professional Staff Congress/ CUNY.

Bergadano, Zichello & Babchick, New York, N.Y. (Ann Teresa McIntyre of counsel), for respondent Lewis Rosenberg.

In an action, inter alia, for an accounting of pension payments and to recover damages for breach of contract, the plaintiff appeals from (1) an order and judgment (one paper) of the Supreme Court, Kings County (Shaw, J.), dated December 18, 1985, which, upon their motions, dismissed the complaint insofar as it is asserted against the defendants City of New York, Teachers' Retirement Board of the City of New York, Teachers' Retirement System of the City of New York and the Department of Insurance of the State of New York, (2) an order of the same court (Bernstein, J.) dated December 24, 1985, which, upon his motion, dismissed the complaint insofar as it is asserted against the defendant Lewis Rosenberg, and (3) an order of the same court (Hurowitz, J.) dated February 14, 1986, which, upon their motion, dismissed the complaint insofar as it is asserted against the defendants Board of Higher

Education of the City of New York, City University of New York, New York City Technical College, and Professional Staff Congress/CUNY.

ORDERED that the order and judgment and the orders are affirmed, without costs or disbursements.

The plaintiff's claims against the public agency defendants, while not brought in the form of a proceeding pursuant to CPLR article 78, are governed by the four-month Statute of Limitations in CPLR 217 (see, Press v Monroe County, 50 NY2d 695; Solnick v Whalen, 49 NY2d 224). Although the plaintiff has characterized her causes of action as involving fraud, conspiracy, breach of contract, breach of fiduciary duty and negligence, the crux of her complaint is that she believes the defendants have improperly calculated her pension benefits. The plaintiff retired in 1982 and the determination as to the amount of her pension was approved by the defendant Teachers' Retirement Board of the City of New York on January 20, 1983. This action, commenced more than two years later, is thus time barred as to the public agency defendants.

The claims against the defendant union, the Professional Staff Congress/ CUNY, were also properly dismissed. The plaintiff's various allegations of wrongdoing by the union are in essence a claim for breach of the duty of fair representation. The evidence in the record shows that the union's staff met with the plaintiff to attempt to resolve issues concerning her pension benefits and at one point arranged for representation by an outside attorney before concluding that her claims were without merit. While the plaintiff disagrees with the union's judgment as to the validity of her pension claims, she has not shown that the union's conduct was arbitrary, discriminatory or in bad faith (see, Matter of Civil Service Bar Assn. v City of New York, 64 NY2d 188; Symanski v East Ramapo Cent. School Dist., 117 AD2d 18).

We agree with the determination that the plaintiff's complaint fails to state a cause of action against the defendant Rosenberg, an attorney to whom the plaintiff was referred by the union in February 1983 for assistance in bringing a lawsuit against the defendant Teachers' Retirement Board of the City of New York. The plaintiff failed to

allege facts sufficient to show that Rosenberg did not exercise "that degree of skill commonly exercised by an ordinary member of the legal community, resulting in damages to the client." (Saveca v Reilly, 111 AD2d 493). Rosenberg withdrew as the plaintiff's attorney after arranging for her consultation with an actuary regarding her claim and after advising her of the four-month Statute of Limitations. Any damages caused by the plaintiff's failure to timely bring this action were not attributable to his conduct.

Finally, we have reviewed the remaining contentions of the plaintiff and find them to be without merit.

BRACKEN, J.P., LAWRENCE, KUNZEMAN and SPATT, JJ., concur.

ENTER:

MARTIN H. BROWNSTEIN
Clerk

June 22, 1987 CLISSURAS v CITY OF NEW YORK 3774E 3775E 3776E

At a Special Term, Part 1 of the Supreme Court of the State of New York, County of Kings at the Courthouse, Civic Center, Brooklyn, New York on the 18 day of December, 1985.

PRESENT: HON. JAMES H. SHAW, JR.
JUSTICE

----------x

ALICE CLISSURAS,

Plaintiff,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, LEWIS ROSENBERG,

Defendants.

PROPOSED JUDGMENT

Index No. 20522/85

----------x

Plaintiff herein having commenced this action for $500,000 in compensatory damages and $2,000,000 in punitive damages and for a judgment directing defendants to undertake an accounting of plaintiff's pension moneys; and

Defendants City of New York, Teachers' Retirement Board of the City of New York, and Teachers' Retirement System of the City of New York (City defendants) having moved pursuant to CPLR §3211(a)(5) to dismiss the complaint because the action is barred by the statute of limitations; and

Defendant Department of Insurance of the State of New York (Insurance Department) having moved pursuant to CPLR §§ 3211(a)(2), 3211(a)(5), and 3211(a)(7) to dismiss the complaint because the Court lacks subject matter jurisdiction of plaintiff's claim for damages, the action is barred by the statute of limitations, and the complaint fails to state a cause of action and

The aforementioned motions to dismiss having been heard by the Honorable James H. Shaw, Jr., at a Special Term, Part 1 of this Court, held at the Courthouse located at the Civic Center, Brooklyn, New York on November 13, 1985; and

The Court having considered the said motions and written memoranda and oral argument in support thereof, as well as plaintiff's written and oral responses thereto;

NOW, upon reading and filing the Notice of Motion to Dismiss of the City defendants undated and the supporting affidavit of Suzanne Lank dated October 10th, 1985 and all exhibits annexed thereto, the Notice of Motion to Dismiss of the Insurance Department undated and the supporting affidavit of Sue Barnett Bohringer sworn October 15, 1985 and all exhibits annexed thereto, plaintiff's affidavit in opposition to the City defendants' motion to dismiss, and all exhibits annexed thereto, plaintiff's affidavit dated November 6, 1985 in opposition and affidavit in opposition of Alice Clissuras dated November 7, 1985 in opposition to the Insurance Department's motion to dismiss and all exhibits annexed thereto, and the affirmations of Suzanne Lank both dated November 12, 1985 in reply to plaintiff's affidavit responding to the City defendants' motion to dismiss; and plaintiff having appeared pro se; City defendants having appeared by FREDERICK A. O. SCHWARZ, JR., Corporation Counsel of the City of New York, by Suzanne Lank, and the Insurance Department having appeared by Robert Abrams, Attorney General of the State of New York, by Sue Barnett Bohringer; and upon the written

memorandum decision of this Court dated November 19, 1985;

NOW, upon the motion of FREDERICK A. O. SCHWARZ, JR., Corporation Counsel of the City of New York, by Suzanne Lank, Assistant Corporation Counsel, attorney for City defendants, it is

ADJUDGED that plaintiff's causes of action against both the City defendants and the Insurance Department are barred by the four-month statute of limitations; and the complaint is dismissed as to the City defendants and the Insurance Department, and the action is severed accordingly.

ENTER:

/S/ James H. Shaw Jr.

J.S.C.

/S/ Anthony N Durso
Clerk

Dated:

(Stamped)
Filed December 19, 1985

MEMORANDUM

SUPREME COURT

ALICE CLISURRASM
Plaintiff,
vs.
CITY OF NEW YORK, et al.,
Defendants.

By James H. Shaw, Jr. J.S.C.
Dated November 19, 1985
Index No. 20522/85

The motions by the City of New York and the Department of Insurance of the State of New York are decided simultaneously.

Plaintiff's law suits were commenced some three years subsequent to her retirement and are subject to a four month Statute of Limitations. Both causes of action are time barred.

Plaintiff's complaint against each defendant is dismissed.

Settle Judgment

/S/ James H. Shaw Jr.
J.S.C.

MEMORANDUM

SUPREME COURT : KINGS COUNTY

Alice Clissuras,
Plaintiff,
vs.
City of New York, et al.,
Defendants.

By Bernstein, A.D. J.
Dated December 24, 1985
SPECIAL TERM PART I
Index No. 20522/85

The plaintiff brings this action against all of the defendants alleging conspiracy to defraud her from the true amount of pension that she has earned. She claims that the co-conspirator defendants have concealed from her the true amount of her pension, the rights to which she is entitled and the fact that certain increments to which she is due were not included in her pension. The defendant Rosenberg moves to dismiss the complaint on the grounds that it fails to set forth a cause of action. The defendant Rosenberg is an attorney who was retained by the defendant on or about February 6, 1983 by the Professional Staff Congress/CUNY, the union representing the plaintiff. Thereafter, on or about February 15, 1983 the defendant

Rosenberg and the plaintiff met in his office. Thereafter, on or about April 5, 1983 the defendant Rosenberg wrote to the plaintiff withdrawing as her attorney. In the brief submitted by the plaintiff she details the claim against the defendant Rosenberg as follow:

> "Defendant Rosenberg met with plaintiff once on February 15, 1983. She detailed the problems as she knew them at that time and she supported this with the documentation which she had at that time. Defendant Rosenberg did not discuss pleaintiff's (sic) with her; he did not discuss plaintiff's rights or choices; he did not give her any direction. At the end of the meeting, he told her to get an actuary."

It is obvious from the very detailed motion papers submitted by the plaintiff that all of her claims occurred prior to the meeting with the defendant Rosenberg and that she has suffered no damages by virtue of any malpractice or negligence on the part of the defendant Rosenberg.

She alleges in her conclusion that the causes of action against Rosenberg

are "concealment of the causes of action, conspiracy, and breach of contract and fiduciary duty, all of which occurred upon contract with defendant Rosenberg and after such contract and are continuing to date."

Obviously, the plaintiff is asserting those causes of action in this very action presently pending and, therefore, has suffered no damages.

The motion is granted.

ENTER,

/S/ ADB

J. S. C.

At a Special Term, Part I, of the Supreme Court of the State of New York, County of Kings, at the Courthouse, Civic Center, Brooklyn, New York, on the 14 day of February, 1986

PRESENT: HON. BARRY HUROWITZ, JUSTICE.

----------x

ALICE CLISSURAS,

Plaintiff,

-against-

ORDER

Index No. 20522/85

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/ CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK and LEWIS ROSENBERG,

Defendants.

----------x

UPON the notice of motion and the affidavit of Sue Barnett Bohringer, dated November 26, 1985, together with the exhibits attached thereto, in support of the motion of defendants Board of Higher Education of the City of New York, City University of New York and New York City Technical College (the "City University defendants") to dismiss the complaint,

the affidavit of plaintiff, dated December 16th, 1985, together with the exhibits attached thereto, in opposition to the motion of the City University defendants, the notice of motion and the affirmation of D. Nicholas Russo, dated December 6, 1985, together with the exhibits attached thereto, the affidavit of Beryl Weinberg, dated December 9, 1985, in support of the motion of defendant Professional Staff Congress/CUNY to dismiss the complaint or, in the alternative, for summary judgment, the affidavit of plaintiff dated December 20th, 1985 in opposition to the motion of Professional Staff Congress/CUNY, the reply affirmation of D. Nicholas Russo, dated December 19, 1985, together with the exhibits attached thereto, in further support of the motion of Professional Staff Congress/CUNY, and oral argument having been heard on December 20, 1985, it is

ORDERED that the motion to dismiss of the City of University defendants is granted and the action is severed accordingly and it is further

ORDERED that the motion to dismiss of defendant Professional Staff Congress/

CUNY is granted and the action is severed accordingly.

ENTER

/S/ Barry Hurowitz

J.S.C.

STATE OF NEW YORK
COURT OF APPEALS

- - - - - - - - - - - - - - - - - x

ALICE CLISSURAS,

Plaintiff-Appellant,

-against-

CITY OF NEW YORK, TEACHERS' RETIREMENT BOARD OF THE CITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, NEW YORK CITY TECHNICAL COLLEGE, PROFESSIONAL STAFF CONGRESS/CUNY, DEPARTMENT OF INSURANCE OF THE STATE OF NEW YORK, and LEWIS ROSENBERG,

Defendants-Respondents.

- - - - - - - - - - - - - - - - - x

Ct.of Ap. Mo.No. 116/SSD74

App.Div.2d No.87603 3774E-3776E

Kings Co. Clerk's Index No.20522/85

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Alice CLISSURAS, the plaintiff-appellant above named, hereby appeals to the Supreme Court of the United States, from an order of the Court of Appeals of the State of New York, dismissing appeal,

entered October 13,1987, and from all orders of the Courts below relevant thereto.

This appeal is taken pursuant to U. S. Const., Amend. I, Amend. IV, Amend. V, and Amend. VII; N.Y.S. Const., Art. I, §2, §8, and §11; Deprivation of Constitutional Rights of Due Process, Trial, Counsel, Speech, and Equal Protection of Laws.

DATED: November 2, 1987.

ALICE CLISSURAS
Plaintiff-Appellant
P. O. Box 021750
Brooklyn, NY 11202
(718) 875-6171

(Affidavit of Service attesting that on November 2, 1987, the above Notice of Appeal was served on each of the parties herein required to be served and that on the same date, the Notice of Appeal was mailed, by registered mail, to the Court of Appeals of the State of New York and to the Supreme Court of the United States; a duplicate original was hand delivered to the Supreme Court of the State of New York, County of Kings, which which was duly stamped: FILED
1987 NOV 2 PM 2:17
KINGS COUNTY CLERK)